

**NATIONAL ADVISORY COMMITTEE
TO THE U.S. REPRESENTATIVE
TO THE
NORTH AMERICAN COMMISSION
FOR ENVIRONMENTAL COOPERATION**

July 28, 1997

The Honorable Carol M. Browner
Administrator
United States Environmental Protection Agency
401 M Street, NW
Washington, DC 20460

Dear Ms. Browner:

On behalf of the U.S. National Advisory Committee to the U.S. Representative to the North American Commission for Environmental Cooperation, I am pleased to send you the advice formally agreed by the Committee at its sixth plenary meeting, held in Burlington, Vermont, on July 24-25, 1997. As you will see, the attached recommendations (NAC Advice Nos. 97-1 to 97-6) cover a range of pressing issues relating to U.S. implementation of NAAEC. Indeed, as reflected in the first advice agreed by our newly reconstituted committee, we view the months ahead as a crucial period for NAAEC and for the CEC, during which we believe your direct personal attention to the CEC agenda will be especially important. We are also recommending that the U.S. agree to a special session of the CEC Council early this autumn, at which all three members of the Council would be present.

In NAC Advice Nos. 2-5, we turn our attention to several specific issues now confronting the CEC. First, the current Article 13 investigation of water resources in the area of the San Pedro river has raised some questions about the procedures to be used in preparing Article 13 reports. Article 13 gives the CEC Secretariat broad investigatory powers. It specifically authorizes the Secretariat to undertake public consultations while preparing Article 13 reports, but also requires that reports be submitted to the CEC Council on a confidential basis prior to their publication. The result is an apparent tension between the ability of the Secretariat to involve the public in the drafting of an Article 13 report and the confidential (if temporary) submission of the report to the Council. In NAC Advice No. 97-2, we advise you to resolve this tension in favor of maximum public consultation, recognizing that the value of the Article 13 process will often depend on the Secretariat's capacity to produce a report that reflects the participation of local communities and other stakeholders.

NAC Advice No. 97-3 addresses the forthcoming negotiations over possible revision to the Guidelines for Submissions on Enforcement Matters under NAAEC Articles 14 and 15. In an advice letter dated October 16, 1996, NAC gave its “provisional judgment” that the guidelines were working well, and were being administered by the CEC Secretariat with “balance and professionalism.” We further advised that any review of the guidelines should take place through an open public process, with minimum reliance on confidential negotiations drafts. In light of the recent decision of the CEC Council to proceed with the Article 14 guidelines review—and in light of the additional experience that has been gained with Articles 14 and 15 since last October—NAC is now reiterating its view that the Article 14-15 process appears to be working well under the current guidelines, and that any review of those guidelines should be handled openly and with public involvement. The NAC intends to remain seized of this issue in the months ahead and looks forward to playing an active role as the guidelines review proceeds.

NAC Advice No. 97-4 relates to another core CEC activity. As you know, the preliminary study of NAFTA’s environmental effects currently being conducted by the CEC was the object of some controversy at the recent meeting of the CEC Council. The NAFTA Effects study is so central to the fundamental trade and environment mission of the CEC. Accordingly, the NAC recommends its completion through a process that protects the objectivity and independence of the Secretariat in conducting the study, and further recommends the full publication of the projects results. NAC views this project as an important base for building the CEC’s 1998 work program on trade and environment.

NAC Advice No. 97-5 reflects the Committee’s concern with questions that have been raised about the appropriate scope of the CEC’s cooperative agenda and work program. While the NAC is sensitive to the need for continuing to focus the CEC work program, we are concerned that major areas of activity not be unduly restricted or eliminated. We recommend that you maintain a broad and balanced cooperative agenda at the Commission, as called for in Executive Order No. 12915, signed by President Clinton on May 13, 1994.

Finally, the newly reconstituted NAC wishes to acknowledge the excellent service of NAC members whose terms expired last year. NAC Advice No. 97-6 formally recognizes their contribution to the Committee, and further reflects our commitment to continuity by declaring our intention to build upon the advice previously rendered by the Committee.

In conclusion, after the hiatus imposed by the re-nomination process, the NAC is now fully engaged with the issues at hand. We hope the attached advice proves useful to you. As we continue our work, we look forward to working with you in pursuit of vigorous NAAEC implementation.

Sincerely,

David K. Schorr
Chairman, National Advisory Committee

Attachments

**NATIONAL ADVISORY COMMITTEE TO THE U.S. REPRESENTATIVE TO THE
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NAC Advice No. 97-1

U.S. Commitment to NAAEC Implementation

The Commission for Environmental Cooperation, established under the North American Agreement on Environmental Cooperation, is an intergovernmental organization making an important contribution to international environmental governance. Having completed three years of operation, the CEC now faces a pivotal period during which important decisions about its future will be made. In this context, there is an acute need for high-level U.S. commitment to support the CEC and to provide the international leadership necessary to catalyze on-going cooperation among the three NAAEC countries.

Against this background, it was regrettable that circumstances prevented the U.S. Representative from attending the CEC Council session held in Pittsburgh on June 11-12, 1997. In the past, the personal presence of the U.S. Representative at CEC Council meetings has had a demonstrable positive impact. Moreover, the absence of the U.S. Representative from Pittsburgh was unfortunately interpreted by some participants and observers as an indication of declining U.S. commitment to the CEC. The NAC therefore recommends that the U.S. government do every thing possible to dispel this misperception, and to reinvigorate high level U.S. participation in CEC processes. In particular, the NAC recommends that the U.S. Representative support and attend a special session of the CEC Council this autumn.

*July 25, 1997
Burlington, VT*

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NAC Advice No. 97-2

Public Participation in Preparation of Article 13 Reports

The implementation of NAAEC Article 13—which grants the CEC Secretariat broad powers to conduct proactive investigations into matters within the scope of the CEC work program—has given rise to questions regarding the relationship between provisions of Article 13 providing for public consultations and a provision requiring the submission of Article 13 reports to the CEC Council prior to publication.

The U.S. NAC advises that questions regarding the interpretation and application of Article 13 should be answered in a manner consistent with the need to establish opportunities for the meaningful participation of local communities and other stakeholders in CEC processes. Article 13 reports, if they are to address issues of real environmental significance, will often be strengthened by public involvement and the building of consensus. Accordingly, there should be a strong bias in favor of transparency and public participation. The term “report to the Council” in Article 13:3 should be given a sufficiently narrow definition to allow maximum input from and feedback to local communities and other stakeholders.

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NAC Advice No. 97-3

Review of Guidelines for Citizen Petitions

At its recent meeting in Pittsburgh (June 11-12, 1997), the CEC Council agreed to move ahead with a review of, and possible revisions to, the Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation. Ten months ago, the NAC advised the U.S. Representative of its provisional view that the current Guidelines were working well, and were being administered by the CEC Secretariat with "balance and professionalism" (*see* NAC advice letter dated October 16, 1996). As the review of the Guidelines now gets underway and in the light of ten additional months' experience the NAC now reiterates its opinion that the current Guidelines are functioning well.

The NAC also reiterates its previous recommendation that any review of the Article 14-15 Guidelines be conducted through an open process that ensures full public participation in the evaluation process and in any negotiation of changes to the current Guidelines. The NAC intends to participate in the Guidelines review as fully as possible.

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NAC Advice No. 97-4

Completion of the CEC "NAFTA Environmental Effects" Project

CEC project No. P-97.05.01 ("NAFTA Environmental Effects") is the only project in the current CEC work program that directly addresses the trade-environment link. Given the importance of trade and environment issues to the CEC's core mission, and the potential contribution of P-97.05.01 to accomplishing that mission, priority should be given to the proper completion of the "NAFTA Environmental Effects" project.

In particular, given the controversial and complex nature of the issue, the NAC stresses the need to protect the objectivity and independence of the CEC Secretariat in its conduct of this study, and to ensure the full publication of the project's methodology, sectoral investigations, and final conclusions. NAC further recommends that the project's results be carefully considered during the preparation of the CEC's 1998 trade and environment work program.

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NAC Advice No. 97-5

A Balanced CEC Work Program

In the context of the evaluations of CEC operations now underway at the national and international levels and in light of increasing budgetary pressures experienced by the CEC the appropriate scope and focus of the CEC work program has come under review.

While the NAC recognizes the need for a CEC work program that is well-focussed and makes efficient use of budgetary resources, we note the breadth of the CEC's mandate including as set forth under NAAEC Article 10 and the important contributions to North American environmental cooperation that the Commission has already begun to make on a range of significant issues. The NAC recommends that, without prejudice to the need for further sharpening and development of the CEC's substantive focus, the CEC should continue to fulfill its broad mandate through a well-balanced work program. The NAC notes that this approach is consistent with the policy set forth in Executive Order No. 12915 of May 13, 1994, in which the President ordered that U.S. priorities at the CEC include, *inter alia*, the environmental impact of goods throughout their life cycles, pollution prevention, transboundary and border environmental issues, conservation of biodiversity and endangered species, enforcement cooperation, and management of hazardous materials.

The NAC intends to play an active part in the development of the CEC's 1998 work program, and to provide more specific advice on this topic in the months ahead.

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NAC Advice No. 97-6

Continuity of the NAC

The NAC wishes to acknowledge the hard and excellent work provided by the following members of the NAC, whose terms of service expired in the past year: Mary Kelly (chair), Veronica Callaghan, Raul Deju, Helen Ingram, Stewart Hudson, Paula McLemore, Dennis Phelan, Ann Pizzorusso, David Simon, Stephen Viederman, and Margaret Wells-Diaz. As members of the NAC during its start-up phase, these individuals made an important contribution to building the NAAEC system, and to environmental cooperation in North America.

The NAC further recognizes the value of the advice developed over the course of its first five plenary meetings. We will continue to build on that advice, and carefully review such advice when relevant to specific issues arising in the future.

*July 25, 1997
Burlington, VT*